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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ISSAC M. CORONADO, Plaintiff and Appellant, v. WILLIAM CHADDOCK, Defendant and Respondent.	H030387 (Santa Clara County Super. Ct. No. CV047186)

Appellant Issac Coronado sued respondent William Chaddock, the guardian of the estates of Coronado's three children, for negligence and embezzlement related to Chaddock's management of trust property that belonged to the children. The trial court sustained Chaddock's demurrer to Coronado's complaint without leave to amend and dismissed the action.

On appeal, Coronado contends that the court erred when it sustained the demurrer on the ground that Coronado did not have standing to sue, that the court erred when it failed to state its reasons for sustaining the demurrer without leave to amend in its order, and that the court abused its discretion when it failed to grant leave to amend. Coronado also argues that the court abused its discretion when it failed to rule on his motion for change of venue and when it failed to rule on Chaddock's motion for a protective order. We find no error and affirm the judgment of dismissal.

FACTS[1]

Issac Coronado killed his wife Leticia Coronado on March 22, 1999. He was convicted of murder on September 12, 2000, and sentenced to life in prison without the possibility of parole. At the time of the murder, the Coronados owned a home in Watsonville and had three minor children, Juan, Edie, and Kristie.[2]

After Coronado was convicted of murdering his wife, Chaddock was appointed guardian of the estates of all three minor children. Other individuals were appointed guardians of the persons of the children. The cases were consolidated and the assets of the estates were transferred into the Coronado Family Trust. Chaddock was appointed trustee.

In June 2001, the probate court entered a default judgment against Coronado, finding that he had intentionally and feloniously killed his wife within the meaning of Probate Code section 250, et seq. The court made an order with respect to Coronado's ownership interest in the family home, finding that the property was "owned 79.73%" by the administrator of Leticia's estate "and 20.27%" by Coronado.

The court appointed a guardian ad litem to pursue a civil action on behalf of the children against Coronado for the wrongful death of Leticia (Santa Cruz County Case No. CV 136434). In May 2002, the court approved a minor's compromise in the wrongful death action. The minor's compromise provided that Coronado would transfer his interest in the house to Chaddock as guardian of the estates of the children and that the house could not be sold until Kristie, the youngest child, turned 18 on April 12, 2007. The agreement also provided for the payment of $12,152.63 in attorneys fees and a

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[1] The facts are based on the allegations of the complaint and court documents from various probate actions and a wrongful death action involving the minor children that Chaddock asked the court to judicially notice as part of the hearing on the demurrer.

[2] For ease of reference and not out of disrespect, we shall hereafter refer to Coronado's wife and children by their first names and to Issac Coronado as "Coronado."

reimbursement of $15,270 to the Victim Compensation and Government Claims Board for money it had paid for funeral expenses and psychological treatment for the minors.

In October 2003, Chaddock obtained an order settling the first account on the Coronado Family Trust. He obtained an order settling the second account and report of the trustee in September 2005. At that time, the trustee reported property on hand of $268,910.35, consisting of real property and cash.

By the time Coronado filed the instant action in August 2005, Juan and Edie were adults. Kristie was still a minor, age 16.

PROCEDURAL HISTORY

I. Coronado's Complaint

On August 16, 2005, Coronado filed a complaint against Chaddock alleging causes of action for negligence and embezzlement. Coronado alleged that Chaddock was a professional accountant and that in August 2003, the court appointed Chaddock to represent the interests of Coronado's children with regard to the management of the Coronado residence. The complaint alleged Chaddock collected $1,500 per month in rent for the property and was responsible for distributing $400 per month to each of Coronado's children and retaining the $300 per month balance to cover expenses such as taxes, insurance, and maintenance. Coronado alleged Chaddock negligently performed his duties and that as a result of his negligence, the residence was in need of a new roof and a new garage door, fire insurance had not been purchased, and the children had not been receiving their fair shares of the rental income.

In his cause of action for embezzlement, Coronado alleged that while the children had received some rental income from the property, the payments had been inconsistent. He claimed Chaddock owed Juan $1,200 (three months), Edie $4,800 (one year), and Kristie $4,800 (one year) in back rent. He also asserted Chaddock had withheld at least

$15,000 in funds from the children and another $15,000 from Kristie on a State Farm life insurance policy. He alleged Chaddock had "fraudulently" appropriated the children's money for his own use and claimed Chaddock refused to respond to his efforts to resolve the matter informally. The complaint prayed for $250,000 in general damages and punitive damages.

II. Chaddock's Demurrer

In January 2006, Chaddock responded to the complaint with a demurrer, which was originally scheduled for hearing on March 2, 2006.

On February 2, 2006, the court dismissed the case without prejudice because Coronado failed to appear at an Order to Show Cause hearing on the case management calendar. The court subsequently granted Coronado's motion to set aside the order of dismissal and reinstated the complaint.

Chaddock renoticed the hearing on his demurrer. In the demurrer, he set forth the history regarding his appointments as guardian of the estates of the children and trustee of the Coronado Family Trust and the settlement of the wrongful death action. Chaddock argued that Coronado did not have any interest in the real property or the property of the trust since he had quitclaimed his interest in the house to the trust in settlement of the wrongful death action. He asserted that the trust was under the supervision of the court and that all funds held in trust and distributed to the children had been accounted for.

Chaddock argued that Coronado did not have "legal capacity to sue" since he had no interest in the property at issue. He argued that Coronado did not have standing to bring this action on behalf of his adult children and that he did not have standing to sue on behalf of the minor child, Kristie, because his authority as parent ceased when the court appointed a guardian of the person for Kristie in December 2000. Chaddock also argued the issues set forth in the complaint are res judicata, since his actions as trustee concerning the management and distribution of the trust assets had been approved by the

court. Finally, he argued that venue was incorrect, since the matters complained of occurred in Santa Cruz County. However, Chaddock did not make a motion for change of venue.

Coronado did not file written opposition to the demurrer. We do not know whether he appeared at the hearing of the demurrer by phone, since he has not provided us with a reporter's transcript of the hearing.

On June 13, 2006, the court sustained the demurrer without leave to amend and dismissed the action with prejudice. On July 31, 2006, the court issued an amended order on the demurrer, which stated that the demurrer had been sustained on the ground that Coronado "does not have legal capacity to sue and all matters plead[ed] in the complaint are res judicata."

III. Other Motions

In March 2006, Coronado prepared a motion for change of venue, requesting a change of venue to Santa Cruz County because the events giving rise to the complaint occurred there. Coronado's papers in support of this motion are not part of the clerk's transcript; they were attached to a motion to augment the record on appeal. They are not conformed and it is not clear from the record whether they were ever filed in the trial court. According to Coronado's opening brief, Chaddock never opposed the motion and the court never ruled on his request.

On June 8, 2006, shortly before the hearing on the demurrer, Chaddock prepared and served a motion for protective order, asking the court to excuse him from responding to discovery that had been propounded by Coronado while the parties waited for a ruling on the demurrer. He argued Coronado was not entitled to the discovery because he had no standing, all matters alleged by Coronado were res judicata, and the discovery placed an undue burden on the trust, by running up attorney fees. Coronado objected to the

motion on procedural grounds. There is no evidence the motion or the objections were filed with the court. The court never ruled on the motion.

DISCUSSION

I. Motion for Change of Venue

Coronado contends the trial court abused its discretion when it failed to rule on his motion for change of venue. The copy of the motion for change of venue, which appears in the record as an attachment to Coronado's motion to augment the record, is not conformed. Thus, there is no proof the motion was ever filed in the trial court. On our own motion, we have taken judicial notice of the docket entries in the superior court's public website, which reveal that the motion for change of venue was never placed on calendar. (*Deschene v. Pinole Point Steel Co*. (1999) 76 Cal.App.4th 33, 37, fn. 2 [appellate court may take judicial notice on its own motion]; Evidence. Code, § 452, subd. (d)(1).) Based on this record, we conclude that while Coronado may have prepared and served a motion for change of venue, there is no evidence the motion was ever filed. Since the motion was never presented to the court, the court did not abuse its discretion when it failed to rule on the motion.

II. Motion for Protective Order

Coronado contends the court abused its discretion when it failed to rule on Chaddock's motion for protective order. The court filed its order sustaining the demurrer without leave to amend and dismissing the action on June 13, 2006. The hearing on the motion for protective order was scheduled for July 7, 2006. After the court dismissed the case, the issues raised in the motion for protective order became moot. Moreover, the docket entries in the court's public website reveal that while Chaddock had reserved a date for the hearing on the motion, he never filed the moving papers with the court. The

court therefore did not abuse its discretion when it failed to rule on the motion for protective order.

III. Demurrer

A. Standard of Review

"On appeal from a judgment of dismissal following an order sustaining a demurrer without leave to amend, we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory. [Citations.] We assume the truth of all material facts properly pleaded, as well as facts that may be implied or inferred from those expressly alleged. [Citation.] Relevant matters that are properly the subject of judicial notice may be treated as having been pled." (*Ross v. Creel Printing and Publishing Co.* (2002) 100 Cal.App.4th 736, 742 (*Ross*).)

B. Standing to Sue

Coronado argues the court erred when it sustained the demurrer on the ground that he lacked capacity to sue. He argues that, as a minor, Kristie lacked capacity to sue and that, as her natural father, he had the capacity to sue on her behalf. Without any citation to the record or legal authority, Coronado argues that he retained his parental rights with regard to Kristie.

Although the parties argue this as an issue involving the capacity to sue, this case really involves Coronado's standing to bring the instant action on behalf of his children. To have standing to sue, Coronado must be the real party in interest with respect to the claim sued upon. (Code Civ. Proc., § 367;[3] *Cloud v. Northrop Grumman Corp*. (1998) 67 Cal.App.4th 995, 1004.) Generally, the real party in interest is the person possessing the

[3] All further statutory references are to the Code of Civil Procedure, unless otherwise stated.

right sued upon by reason of the substantive law. (*Gantman v. United Pacific Ins. Co.* (1991) 232 Cal.App.3d 1560, 1566.)

"The question of standing to sue is different from that of capacity. Incapacity is merely a legal disability, such as minority or incompetency, which deprives a party of the right to represent his or her own interests in court. On the other hand, standing to sue—the real party in interest requirement—goes to the existence of a cause of action, i.e., whether the plaintiff has a right to relief." (*American Alternative Energy Partners II v. Windridge, Inc*. (1996) 42 Cal.App.4th 551, 559.)

Coronado sued the trustee of the Coronado Family Trust. Coronado does not allege that he is a beneficiary of the trust or that he has any ownership interest in any of the trust property. Instead, he states claims on behalf of his children.

In his demurrer, Chaddock argued that Juan and Edie were adults and had received the balances on their trusts, except the money they would receive from the sale of the residence. There is no evidence in the record regarding Juan or Edie's dates of birth or ages. Coronado did not dispute that Juan and Edie were adults below and asserts that they were adults in his brief on appeal. As adults, Juan and Edie had capacity to sue the trust in their own names. Coronado's authority over Juan and Edie ceased when they reached the age of majority. (Fam. Code, § 7505, subd. (c).) The claims against the trust belonged to Juan and Edie, not their father. Coronado therefore did not have standing to sue on behalf of Juan or Edie.

At the time Coronado filed his complaint, Kristie was still a minor. Minors lack capacity to sue in their own names. Instead, litigation must be conducted "by a guardian or conservator of the estate or by a guardian ad litem." (§ 372, subd. (a).) The guardian or guardian ad litem is not a party to the action. Instead he or she is a representative of record of a party who lacks capacity to sue. (*J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 964.) Parents are often appointed as guardians ad litem for their minor children.

The parents of a legitimate, unmarried child may sue the person responsible for injury to the child unless a guardian has been appointed for the child, in which event the guardian must maintain the action. (§ 376, subds. (a), (e); Weil & Brown, Cal. Practice Guide, Civil Procedure Before Trial (2006 The Rutter Group) ¶ 2:40.1, p. 2-20, citing § 376.) Generally, the authority of a parent ceases upon the appointment by the court of a guardian of the person of the child. (Fam. Code, § 7505, subd. (a).)

At the time Coronado filed suit, Kristie had both a guardian of the person and a guardian of the estate. Thus, it would have been appropriate for one of her guardians to file suit on her behalf. However, in this case, the guardian of the estate is also the defendant and the lawsuit alleges malfeasance by the guardian of the estate. In such an instance, the lawsuit should have been brought by the guardian of the person. Coronado's parental authority over matters involving Kristie ceased when the court appointed a guardian of the person for her. If the guardian of the person refused to sue, Coronado could have applied to the court for appointment as the guardian ad litem to sue Chaddock. However, Coronado did not obtain the court's permission to act as guardian ad litem on behalf of Kristie. Under these circumstances, the trial court did not err in concluding that Coronado did not have standing to sue on behalf of Kristie.

Since Coronado did not have standing to sue on behalf of any of his children, the trial court did not err in sustaining the demurrer without leave to amend.

C. Failure to State Grounds for Sustaining Demurrer Without Leave to Amend

Defendant contends the judgment must be reversed because the court failed to articulate the grounds for sustaining the demurrer without leave to amend, in violation of section 472d.

Section 472d provides: "Whenever a demurrer in any action or proceeding is sustained, the court shall include in its decision or order a statement of the specific ground or grounds upon which the decision or order is based which may be by reference

to appropriate pages and paragraphs of the demurrer. [¶] The party against whom a demurrer has been sustained may waive these requirements."

The statute expressly provides that the party against whom a demurrer is sustained may waive the judge's specification of grounds under section 472d. A party who fails to notify the court of its failure to state the reasons for sustaining the demurrer waives the requirement of section 472d. (*Krawitz v. Rusch* (1989) 209 Cal.App.3d 957, 962.)

In this case, the court made a general order sustaining the demurrer without leave to amend that did not specify the grounds the court had relied on. We do not have the reporter's transcript of the hearing on the demurrer and nothing in the record suggests Coronado requested a statement of reasons for the court's order at the time of the hearing or any time before he filed his notice of appeal. We therefore conclude Coronado has waived this claim of error.

After Coronado filed his notice of appeal, which referenced section 472d, the court filed an amended order, stating that the demurrer had been sustained on the grounds that Coronado did not have legal capacity to sue and the matters pleaded in the complaint were res judicata. As to this second order, there is no merit to Coronado's claim.

D. Failure to Grant Leave to Amend

Coronado argues he was prejudiced by the order sustaining the demurrer without leave to amend because he was not afforded the opportunity to obtain discovery that would have supported amending the complaint. Citing *Ross, supra*, 100 Cal.App.4th at page 748, Coronado argues it is an abuse of discretion to sustain a demurrer without leave to amend if a plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.

We review the trial court's refusal to grant leave to amend under the deferential abuse of discretion standard. An appellate court will reverse for abuse of discretion if it determines there is a reasonable possibility the pleading can be cured by amendment.

Otherwise, the trial court's decision will be affirmed for lack of abuse. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) The plaintiff has the burden of demonstrating an abuse of discretion by showing how the complaint can be amended to state a cause of action. (*Ross*, *supra*, 100 Cal.App.4th at p. 748.) It is not up to the court to figure out how the complaint can be amended to state a cause of action. It was up to the plaintiff to show "in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) "The plaintiff can make this showing to the appellate court whether or not he made it to the trial court." (*Ross*, *supra*, at p. 748.)

Coronado did not file written opposition to the demurrer in the trial court and thus made no effort to demonstrate to that court how his complaint could be amended to state a cause of action.

In addition, Coronado has not provided this court with the reporter's transcript of the hearing on the demurrer. Thus, we have no way of knowing whether he made any oral argument to the court demonstrating how his complaint could be amended to state a cause of action. With regard to this point, one of the most fundamental rules of appellate review is that an appealed judgment or order is presumed to be correct. "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellate has the burden of overcoming the presumption of correctness. For this purpose, he must provide this court with an adequate record demonstrating the alleged error. Failure to provide an adequate record on an issue requires that the issue be resolved against the appellant, Coronado. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) The record on appeal does not show that Coronado made any effort to demonstrate to the trial court that his complaint could be amended to state a cause of action.

Moreover, Coronado has not advised this court of any information that would contribute to meaningful amendments and his general assertion that the court abused its discretion when it did not give him an opportunity to amend does not suffice to meet his burden on appeal.

For these reasons, we conclude the trial court did not abuse its discretion when it denied Coronado leave to amend.

DISPOSITION

The judgment is affirmed.

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McAdams, J.

WE CONCUR:

_____
Mihara, Acting P.J.

_____
Duffy, J.